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IN THE

Supreme Court, U. S.
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Supreme Court of the United States

October Term, 1973

No. 73-814

THOMAS WARNER HOOPES,

Petitioner,

vs.

STATE TAX COMMISSION OF UTAH,

Respondent.

Petition for Writ of Certiorari To The Supreme Court of Utah

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IN THE

Supreme Court of the United States

October Term, 1973

No.....

THOMAS WARNER HOOPES,

Petitioner,

vs.

STATE TAX COMMISSION OF UTAH,

Respondent.

Petition for Writ of Certiorari To The Supreme Court of Utah

Petitioner prays that a Writ of Certiorari issue to review the Decision of the Supreme Court of Utah filed August 21, 1973.

DECISION BELOW

The Decision is reported at 514 P2nd 221. A copy is appended, Appendix B. No decision was rendered upon the denial of Petitioner's Petition for Rehearing.

JURISDICTION

The Decision of the Supreme Court of Utah was filed August 21, 1973. The judgment of contempt rendered in the District Court was affirmed. A timely Petition for Rehearing was denied on September 21, 1973. Chief Justice Callister signed an Order, October 12, 1973, staying the Decision until December 21, 1973, in order to allow a Petition for Writ of Certiorari to be filed in this Court. This Petition for Certiorari was filed within 90 days after September 21, Rule 22 (1). This Court has jurisdiction under 28 U.S.C., Sec. 1257 (3). Petitioner asserted below and asserts here the deprivation of rights secured by the Constitution of the United States, and *Miranda v. Arizona,* 384 U.S. 436. The procedure below of Supplemental Proceedings by the State Tax Commission of Utah against Hoopes, based on the Utah Rules of Civil Procedure, Rule 69(k), is repugnant to the U. S. Constitution.

QUESTIONS PRESENTED

1. While petitioner is under Internal Revenue Service Intelligence Division investigation and the Revenue Agent and Special Agent gives him the *Miranda* warning,

   A. Can the Utah District Court order him into Court to testify in Supplemental Proceedings concerning his property?

   B. Can the Court order him to the witness stand to testify, after he declines to answer on the grounds that his answers will incriminate him, and he cites to the Court and relies on the 4th, 5th and 14th Amendments and *Miranda?*

C. Can the Court, after swearing him as a witness and he invokes the 4th, 5th and 14th Amendments and *Miranda,* fail to inquire as to his reasons for declining to answer?

D. Can the Court find him in contempt and punish him by fine and sentence for invoking the 4th, 5th and 14th Amendments and *Miranda?*

E. Can the Court require from him as a penalty a $200.00 Bond and then convert the Bond into a fine?

F. Can the District Court require from him a Supersedeas Bond, on appeal, of $2,483.32 and then the Supreme Court of Utah forfeit said amount by affirming the District Court?

2. Pursuant to a Bench Warrant arrest and while petitioner is "in custody" in Court, ***without Counsel,*** and ***without Notice and a Hearing*** can the Court find him in contempt and punish him with a fine and sentence?

3. Does the Supreme Court of Utah Decision do violence to defendant's ***rights and property*** under the 4th, 5th, 6th, 8th and 14th Amendments, and *Miranda?*

4. Is the Supreme Court of Utah Decision in accord with applicable Decisions of this Court? Rule 19 (a).

5. Is Rule 69(k) of the Utah Rules of Civil Procedure as ***used*** and ***applied*** by the Court below, repugnant to the U. S. Constitution?

CONSTITUTIONAL PROVISIONS INVOKED

U. S. CONST. 4th Amend.:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, * * *

U. S. CONST. 5th Amend.:

> * * * nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U. S. CONST. 6th Amend.:

> * * * and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; * * * and to have the Assistance of counsel for his defence.

U. S. CONST. 8th Amend.:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U. S. CONST. 14th Amend. Sec. 1:

> * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves the construction of the Utah Rules of Civil Procedure, Rule 69 (k), Appendix C, the text of which is appended.

STATEMENT OF CASE

The Internal Revenue Service Intelligence Division *directly* commenced the investigation of defendant prior to August, 1972 (R98 and R95).

The Revenue Agent and Special Agent gave defendant the *Miranda* warning in defendant's office during August 1972 (R98).

On August 31, 1972, the State Tax Commission of Utah prepared its Notice and Demand for Payment of Individual Income Tax (R44). On September 15, the Tax Commission prepared a Memorandum (R31) that a Warrant for Delinquent Income Tax was issued, and filed with the Clerk of Court (R47).

Based upon the Tax Warrant, the Tax Commission filed its Motion for an Order in Supplemental Proceedings in the District Court for Salt Lake County (R45), and an Order in Supplemental Proceedings was served on defendant, November 6, 1972 (R46).

Obeying the Order, defendant appeared in Court, *without Counsel,* on November 15, (R48) and his Motion to Dismiss (R39) was Denied (R63).

Defendant was *without Counsel* all through the District Court proceedings. He was *without Counsel* in the Utah Supreme Court through the filing of his Appellant's Brief.

An Attorney in the Courtroom below, called a friend of the Court by the Court, (R62) *informed* the Court,

* * * "This Court does not have jurisdiction over this matter." * * *

Prior to being sworn as a witness, defendant declined to answer on the grounds that he would incriminate himself (R48 through 63) and he cited to the Court and relied on the 4th, 5th and 14th Amendments and *Miranda v. Arizona, 384 U.S. 436.*

After being *directed* by the Court to be sworn as a witness (R63), defendant *again* declined to answer on the grounds that his answers would incriminate him (R64 and R65) and *again* he relied upon and cited to the Court the 4th and 5th Amendments (R65).

Without inquiring of the defendant as to his reasons for declining to answer, the Court ordered him to answer (R65) and *threatened* defendant with *contempt* and *jail sentence* and a *fine* if he did not answer the questions (R66).

* * * * *

"THE COURT: Well, this isn't a criminal case. *Miranda* applies to criminal cases.

MR. HOOPES: Well, according to some sections in the *Miranda,* it applies to all cases wherein an individual feels that his rights are possibly being denied.

THE COURT: You may differ with the Court, but those are the Court's views, that this *Miranda* applies to criminal matters where you could be incriminated personally, criminally." (R59).

* * * * *

"THE COURT: Well, show me a case that says that.

MR. HOOPES: In the 14th Amendment, it covers all cases under the State." (R60).

* * * * *

"A. I will decline to answer that on the grounds that my answer might tend to incriminate me." (R64).

* * * * *

"Q. Where do you bank?

A. I decline to answer that on the same grounds.

THE COURT: The Court orders you to answer." (R65).

* * * * *

"THE COURT: You must submit yourself to the orders of this Court, and if the Court orders you to answer a question, you must answer it or you will be held and found in contempt of this Court.

MR. HOOPES: What will happen to me if I am found in contempt?

THE COURT: The law provides for jail sentences and fines. This Court can enforce its orders." (R66).

* * * * *

"MR. HOOPES: Was the 4th and 5th Amendments of the Constitution denied also?

THE COURT: Your Motion was denied. Now I don't intend to argue further Mr. Hoopes. You will answer the questions of this Court or you will risk contempt and punishment by this Court. What was the question?" (R67).

The Court caused, coerced and forced answers to be given by defendant (R63 through R88).

The Court entered an Order on November 15, 1972 (R35). Defendant filed a Motion to Set Aside the Order (R33). On December 15, the Court Order denied defendant's Motion to Set Aside the Order (R19) and the Order is an Alternative Order, Appendix A.

The appeal to the Utah Supreme Court was filed by defendant December 22, 1972 (R17 and 18). On December 26 he filed his Supplement to Notice of Appeal (R14) and Application for Stay Pending Appeal (R15). Under the Utah Rules of Civil Procedure, (Rule 73a) defendant has one month in which to file his Notice of Appeal to the Utah Supreme Court.

On December 27, 1972, the District Court issued a *forthwith* Bench Warrant without bail (R13 and R7) and the Sheriff *arrested* and took defendant into *custody* and produced and presented him before the Court on December 27, *without Counsel* (R12).

Without notice of a hearing, and a hearing, the District Court *summarily* found defendant in *contempt of Court* "for failure to comply with a prior order of the Court", and fined him $200.00 and sentenced him to serve 30 days in jail (R12). However, the next day, on December 28, (R8) the District Court ordered that defendant "may post a $200.00 cash bond in lieu of payment of fine". Defendant, on December 29, posted a $200.00 cash Bond (R5). He also posted a $2,483.82 cash Supersedeas Bond (R6) as provided by the Alternative Order, Appendix A.

On January 3, 1973, *without* the parties being present or represented, the District Court by Minute Entry, based

upon the Court's Motion, Ordered that the "$200.00 cash bond heretofore posted *shall become a fine* due to defendant's contempt of Court" with the jail sentence suspended (R4). On January 12, the Court by Minute Entry granted defendant's Application For a Stay Pending Appeal (R3).

Defendant, *without Counsel,* timely filed his Appellant's Brief in the Utah Supreme Court. The Tax Commission timely filed its Brief.

On May 22, 1973, defendant retained Attorney Walker E. Anderson and he filed his Notice of Appearance and *personally* appeared before Chief Justice Callister. On Motion, the Chief Justice entered an Order that defendant had until June 19, 1973, in which to file and serve a Reply Brief of Appellant which Reply Brief was timely filed and served on June 15, 1973 (R97). Attorney Anderson fully prepared, planned and expected to *orally argue* the cases before the Utah Supreme Court (R98), however, the cases were Decided *without argument.*

A timely Petition for Rehearing was filed and served (R92 through 108) which was denied September 21, 1973.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BY BELOW

1. Defendant filed in the District Court his Motion to Dismiss and Memorandum of Law and Authorities, citing the 4th, 5th and 14th Amendments and Miranda vs. Arizona, 384 U.S. 436, (R 39 through R 43). *Prior* to being sworn as a witness, he argued the 4th, 5th & 14th Amendments & Miranda to the Court (R 49 through R 63). *After* being sworn as a witness, he

argued the same matters to the Court (R 64, 65, 66, 67 and 82).

2. Defendant cited (R 28) the Utah Rule of Civil Procedure 69 (k), Appendix C, as being repugnant to the Constitution.

3. "THE COURT: your Motion was denied" (R 67).

4. Defendant was *without Counsel* at all stages in the District Court proceedings, and *in custody* of the Sheriff when he was *summarily* found in contempt of Court (R 12).

> "A bench warrant having been issued pursuant to an Order of the Court of 12-27-72, the Sheriff having made his return and having produced said defendant into Court, the defendant, appearing *without Counsel,* * * * defendant is hereby found in Contempt of Court * * * and is fined $200.00 and is ordered to serve 30 days in the Salt Lake County Jail." * * * (R 12).

The 6th Amendment Right to Counsel was *urged* by defendant (R 100) but *not mentioned* in the Utah Supreme Court Decision, Appendix B.

5. In the defendant's Petition for Rehearing (R 98 through 108) the Utah Supreme Court was informed that its Decision struck down defendant's rights under the 4th, 5th, 6th and 14th Amendments (R 100) and that the Decision also violated the *terms and standards* of *Miranda vs. Arizona,* 384 U.S. 436, and *Escobedo vs. Illinois,* 378 U.S. 478. The Decision, Appendix B, makes no mention in any manner about the 4th, 5th, 6th and 14th Amendments. Neither does the Decision mention *Miranda* or *Escobedo.*

REASONS FOR GRANTING THE WRIT

POINT I

THE COURT BELOW IGNORED THE 4th, 5th, 6th and 14th AMENDMENTS AND MIRANDA AND HAS THEREBY DENIED TO PETITIONER ALL OF HIS RIGHTS THEREUNDER.

A, B and C.

While being investigated by the IRS Intelligence Division (R95) and after receiving the Miranda warning by the Revenue & Special Agents (R98) the Court *erred* in Ordering petitioner to testify "concerning his property" in Supplemental Proceedings (R46). He was *without Counsel* at every step in the proceeding against him; and he was *marked* for criminal prosecution by IRS and the State (R95 and R98). The dangerous *coercive conditions* existed in the Court below.

The power to compel testimony is not absolute; and the 5th Amendment privilege can be asserted in *any proceeding,* civil or criminal, administrative or judicial, investigatory or adjudicatory, and protects against any disclosures that the witness *reasonably believes* could be used in a criminal prosecution or could *lead* to other evidence that might be so used; and the scope of the privilege against self incrimination is the same whether invoked in a State or Federal jurisdiction, *Kastigar v. U.S.,* 406 U.S. 441; *Re-Gault,* 387 U.S. 1; *State v. Byington,* 114 Utah 388.

The Constitutional privilege against self incrimination protects a *State witness* against incrimination under Federal as well as *State law, Murphy v. Waterfront Commission,* 12

L ed 2d 678. A witness in a civil case was not compelled to testify against his own interest, *U.S. v. Grundy,* 3 Cranch 337, 2 L ed 459. If a direct answer may criminate the witness, he must be the *sole judge* what his answer would be, *Mason v. U.S.,* 244 U.S. 362; *In Re Contempt of Petty,* 18 Utah 2d 320.

In *Mallory v. Hogan,* 378 U.S. 1, Mallory invoked his privilege against self incrimination and was adjudged *in contempt* and committed to prison. The U.S. Supreme Court reversed and held;

> (1) That the 14th Amendment makes the 5th Amendment privilege against self incrimination applicable to the States, and
>
> (2) The privilege, if properly invoked in a State proceeding, is governed by Federal Standards, and
>
> (3) That judged by Federal standards, the petitioner's claim of privilege should have been upheld.

The *essence* of contempt of Court partakes of the nature of *criminal proceedings* and the rights of one so accused shall be carefully safeguarded, *Powers v. Taylor,* 14 Utah 2d 118.

The Court below ignored these *standards.*

The 4th Amendment looks to the right of privacy, *Warden v. Hayden,* 387 U.S. 294. The 5th Amendment concludes the right to silence. Both the 4th and 5th Amendments nearly run into and mutually throw light upon each other. *Boyd v. U.S.,* 116 U.S. 616.

Today there can be no doubt that the 5th Amendment privilege is available *outside* of criminal Court proceedings and serves to protect persons *in all settings* in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves. *Miranda v. Arizona,* 384 U.S. 436. A defendant's right against self incrimination entitles him to remain silent unless he chooses to speak in the unfettered exercise of his own free will and to suffer *no penalty* for such silence. *Brooks v. Tennessee,* 406 U.S. 605. *Mallory supra.*

The information that a taxpayer's returns are under audit gives sufficient *notice* of the possibility of criminal prosecution regardless of whether the agents contemplate civil or criminal action when they speak to him, *U.S. v. Squeri,* 398 F 2d 785.

The Court below erred in *forcing* petitioner to testify.

In *Boyd* supra, the *notice* to produce the invoice, the *order* by virtue of which it was issued, and the *law* which authorized the order. "were unconstitutional and void."

Therefore, the *Motion* (R45) and the *Order* in Supplemental Proceedings (R46) below and Utah Rule 69 (k), Appendix C, are unconstitutional and void. Baseless searches (R35) shall not proceed. *U.S. v. U.S. District Court,* 407 U.S. 297. The 5th Amendment privilege prohibits the Court and Government from *compelling* a person to incriminate himself. The privilege is intended to secure the witness from *compulsory testimony* against himself by *compulsory methods. Burdeau v. McDowell,* 256 U.S. 465.

In *Slochower v. Board of Higher Education of the City of New York,* 350 U.S. 551, this Court condemned the practice of *imputing* a sinister meaning to the exercise of a persons constitutional right under the 5th Amendment. According to *Ullman v. U.S.,* 350 U.S. 422, the privilege against self incrimination would be reduced to *hollow mockery* if its exercise could be taken as equivalent either to confession of guilt or a conclusive presumption of perjury; and the privilege serves to protect the innocent who otherwise might be ensnared by *ambiguous* circumstances. The Self Incrimination Clause of the 5th Amendment should not be watered down. *Spevack v. Klein,* 385 U.S. 511.

The Court below could have *at least* inquired of petitioner *why* he invoked the 5th Amendment and *why* he desired to remain silent. His privilege against self incrimination should have been sustained, *Hoffman v. U.S.,* 341 U.S. 479.

The Court below should have *applied* the *Miranda* warning to petitioner, *Mathis v. U.S.,* 391 U.S. 1. Mathis was in jail serving a *state sentence,* therefore, he should have been given the *Miranda* warning by the Revenue Agent.

D, E and F.

The Court below ignored the 8th Amendment and punished petitioner by *forcefully* taking his money.

The 14th Amendment secures to petitioner against State invasion and he should suffer *no penalty* for such silence, Mallory supra. *Penalty* means the imposition of any sanction which makes assertion of the 5th Amendment privilege *costly. Griffin v. State of California,* 380 U.S. 609. Forcing

a party to *answer* or *forfeit* a right or property violates the 5th Amendment, *Boyd v. U.S.,* 116 U.S. 616.

The wrongful *conversion* by the Court below of petitioners $200.00 Bond into a *"fine"* (R4 and5) deprives petitioner of his *property* without Due Process of Law, 5th and 14th Amendments; and is cruel and unusual punishment *inflicted* upon petitioner in violation of the 8th Amendment.

The wrongful *forfeit* by the Court below, Appendix B, of petitioners cash Supersedeas Bond of $2,483.82 (R6) deprives petitioner of his *property* without Due Process of Law, 5th and 14th Amendments; and is also cruel and unusual punishment *inflicted* upon petitioner in violation of the 8th Amendment.

Taking petitioner's money is also a *wrongful seizure* and *confiscation* in violation of the 4th Amendment.

POINT II

WHEN IN CUSTODY IN COURT PETITIONER WAS ENTITLED TO COUNSEL AND PRIOR NOTICE OF ANY SUCH PROCEEDINGS.

Petitioner was "in custody" of the Court by the Order in Supplemental Proceedings (R46); and he was "in custody" of the Sheriff (R7) when he was *produced* before the Court (R12); and he was *without Counsel.* These were circumstances which were inherently compelling compulsive pressures. His freedom of action was *totally* impaired.

Escobedo was denied his rights to assistance of Counsel. *Escobedo v. Illinois,* 378 U.S. 478. The *hearing* required by

the Due Process Clause must be "meaningful" and appropriate to the nature of the case, *Bell v. Burson,* 402 U.S. 535.

In *Hensley v. Municipal Court,* 36 L ed 2d 294, the petitioner having been released on his own recognizance, was "in custody" since (1) he was subject to *restraint* not shared by the public generally and, (2) there was unusual and substantial *impairment* of his liberty.

The same restraint (R12) and impairment applied to petitioner. He had the right under the 4th, 5th, 6th and 14th Amendments to resist the *unreasonable demanding search* of the Court (R48 through 89).

Petitioner did not have the *guiding hand* of Counsel at every step in the proceeding against him. *Ferguson v. Georgia,* 365 U.S. 570 and *Powell v. Alabama,* 287 U.S. 45. It is settled that where the assistance of Counsel is a constitutional requisite, the right to be furnished Counsel does not depend on a request. *Carnley v. Cochran,* 369 U.S. 506.

The Court below *recognized* all during the proceedings that petitioner was without Counsel (R12 and R62), yet the State Attorney General and the Court ignored this *need* and *right.* The Court could have *at least* asked petitioner if he wanted an attorney.

The Decision below violates petitioners rights as to Notice and a Hearing as spelled out in *U.S. v. Peterson,* 456 F2d 1135, where the 10th CA stated:

> "This case presents a clear-cut example of judicial abuse of the most basic aspects of procedural due process, i.e., reasonable notice and opportunity to prepare and be heard."

This Court has *denounced* the lack of Notice and Hearing. *Fuentes v. Shevin,* 407 U.S. 67. In *Lynch v. Household Finance Corp.,* 405 U.S. 538 and *Sniadach v. Family Finance Corp.,* 395 U.S. 337 the *procedure* without *Notice* and *Hearing* violated the Due Process Clause of the 14th Amendment.

Recourse is necessary to this Court by Certiorari *for relief* because the State Court below has *denied* to petitioner his Federal rights. *PSC v. Wycoff,* 97 L ed at 298.

CONCLUSION

Petitioner prays that the Petition for a Writ of Certiorari be granted. The Decision below *is not* in accord with applicable Decisions of this Court, Rule 19 (a), i.e. supra, Boyd, Brooks, Escobedo, Ferguson, Griffin, Hensley, Hoffman, Kastigar, Mallory, Mason, Miranda, Murphy and Powell.

Respectfully submitted,

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APPENDIX A

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IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT IN AND FOR
THE COUNTY OF SALT LAKE, STATE OF UTAH

STATE TAX COMMISSION OF UTAH,
Plaintiff,

- v -

THOMAS WARNER HOOPES,
Defendant.

ORDER No. 93-675

The defendant's Motion to Set Aside the Court's previous Order and Supplemental Order having been called up for hearing before the above-entitled Court on the 13th day of December at the hour of 2:00 o'clock, p.m., and the Utah State Tax Commission having been represented by Mr. Bruce M. Hale, Assistant Attorney General, and the defendant, Mr. Thomas Warner Hoopes being present, and the matter being fully argued, and the Court having read the Memorandums on file, and being fully apprised in the premises, now enters the following Order:

1. That the defendant's Motion to Set Aside Order is denied.

2. That the defendant is ordered to comply with the prior Order of this Court entered on the 15th day of November, 1972, within 10 days in its entirety, or, in the alternative, to pay the judgment herein docketed in full, or to file an appeal to the Supreme Court of the State of Utah within 10 days and file a Supersedeas Bond.

DATED this 15th day of December, 1972.

G. HAL TAYLOR
District Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Order to Mr. Thomas W. Hoopes, 2559 Keddington Lane, Salt Lake City, Utah, this 15th day of December, 1972, postage prepaid.

BRUCE M. HALE

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF UTAH

State Tax Commission of Utah,
Plaintiff and Respondent,

v.

Thomas Warner Hoopes,
Defendant and Appellant.

Nos. 13181 and 13173

FILED
August 21, 1973

L. M. Cummings,
Clerk

ELLETT, Justice:

The defendant appeals from an order of contempt made by the district court in a supplemental proceeding wherein the State Tax Commission was attempting to secure some information regarding the assets belonging to the defendant.

The conduct of the defendant was clearly contumaceous, and he does not contend to the contrary. His defense is based upon the proposition that the state income tax law is unconstitutional.

The defendant made a tax return containing no information. He struck the wording about its being made under the penalty of perjury, signed it, and returned it to the plaintiff. Subsequently, pursuant to law,[1] the plaintiff determined the amount of tax due and mailed a notice of deficiency to the defendant and thereafter a demand for payment. The defendant made no request for a redetermination of the

---

[1] Sec. 59-14-58, U.C.A. 1953.

tax[2] and no appeal to this court.[3] He did not pay the tax assessed, and the plaintiff issued a warrant for delinquent taxes, including penalties and interest, in the amount of $2,258.02. Based thereon, the order in supplemental proceedings above referred to was obtained in the district court.

Despite the Eleventh Amendment to the Federal Constitution as interpreted by the case of Hans v. Louisiana,[4] Mr. Hoopes brought suit in the federal district court wherein he sued the State of Utah through its State Tax Commission[5] to have that court determine that our statute and the procedures oulined therein are unconstitutional. Aside from the question of the jurisdiction of the federal court, the ruling made by the judge there was correct,[6] viz.:

> Petitioner's central claim appears to be that no administrative agency has the power to levy upon and cause a sale of the petitioner's property for the payment of delinquent taxes even though the machinery of the court is invoked to effect the sale and adequate notice, right to hearing and prior and subsequent judicial review are assured (as they appear to be by Utah law; e.g., Utah Code Annotated, Section 59-14-29, 59-14-39 to 42), . . . the power of administrative agencies under such circumstances has long been established.

Our statute[7] provides that the warrant issued by the Tax Commission may be filed with the clerk of the district court and shall have the force and effect of a judgment rendered in said court.

---

[2] Sec. 59-14-29, U.C.A. 1953.

[3] Sec. 59-14-40, U.C.A. 1953.

[4] 134 U.S. 1 (1889).

[5] Hoopes v. State Tax Commission, Civil No. 369-72.

[6] Coffin Bros. & Co., et al., v. Bennett, 277 U.S. 29 (1928); Phillips v. Com. 283 U.S. 589 (1931).

[7] Sec. 59-14-60, U.C.A. 1953.

The statute does not deny due process to a recalcitrant taxpayer for the reason that such a one has a right to be heard regarding the determination of his tax[8] and a right to have this court review the ruling of the Commission.[9]

Mr. Hoopes refused to avail himself timely of the due process of law afforded by the statute, and the determination of the tax by the Commission became final.[10]

Since the statutes and the procedure outlined therein did not deprive Mr. Hoopes of "Due Process of Law" as he claims, he is not entitled to any relief on this appeal. He must answer the proper questions propounded to him regarding his assets or bear the consequences of his contumacy.

The judgment of contempt rendered in the district court is affirmed. No costs are awarded.

WE CONCUR:

.....
E. R. Callister, Jr., Chief Justice

.....
J. Allan Crockett, Justice

.....
R. L. Tuckett, Justice

Henriod, Justice, does not participate herein.

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[8] Secs. 59-14-29 to 31, U.C.A. 1953.

[9] Sec. 59-14-40, U.C.A. 1953.

[10] Sec. 59-14-39, U.C.A. 1953.

Cited in 514 P 2nd 221.

B-4

SUPREME COURT OF UTAH

September 21, 1973

Nos. 13181 and 13173

State Tax Commission of Utah,
Plaintiff and Respondent,

v.

Thomas Warner Hoopes,
Defendant and Appellant.

This day petition for rehearing denied; case remitted to Salt Lake County.

L. M. Cummings, Clerk

APPENDIX C

UTAH RULES OF CIVIL PROCEDURE
RULE 69

(k) *Order for Appearance of Judgment Debtor; Arrest.* At any time when execution may issue on a judgment, the court from which an execution might issue shall, upon written motion of the judgment creditor, with or without notice as the court may determine, issue an order requiring the judgment debtor, or if a corporation, an officer thereof, to appear before the court or a master at a specified time and place to answer concerning his or its property. A judgment debtor, or if a corporation, any officer thereof, may be required to attend outside the county in which he resides, but the court may make such order as to mileage and expenses as is just. The order may also restrain the judgment debtor from disposing of any non-exempt property pending the hearing. Upon the hearing such proceedings may be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as on execution against such property.

In aid of an order requiring the attendance of the judgment debtor, the court may, upon satisfactory proof by affidavit or otherwise, that there is danger of the debtor's absconding, order the sheriff to arrest the debtor and bring him before the court, and may order such judgment debtor to enter into an undertaking with sufficient sureties, that he will attend from time to time before the court or master, as may be directed during the pendency of the proceedings and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to jail.

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Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-814

THOMAS WARNER HOOPES,

Petitioner,

vs.

STATE TAX COMMISSION OF UTAH,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

BRIEF FOR RESPONDENT IN OPPOSITION

VERNON B. ROMNEY
Attorney General
Counsel for Respondent

BRUCE M. HALE
Assistant Attorney General
Of Counsel

236 State Capitol Building
Salt Lake City, Utah 84114

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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. .....

THOMAS WARNER HOOPES,
Petitioner,

vs.

STATE TAX COMMISSION OF UTAH,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF UTAH

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The Decision of the Supreme Court of Utah in this case is reported at 514 P. 2d 221. A copy is appended in Appendix D. The Decision of the United States District Court for the District of Utah, Central Division, is also appended in Appendix C. The Decisions of the Third Judicial District Court, in and for Salt Lake County, State of Utah, are appended, Appendix A and B. No decision was rendered upon the denial of petitioner's Petition for Rehearing of Supreme Court's Decision.

JURISDICTION

Respondent does not question the jurisdiction of this Court.

QUESTIONS PRESENTED

1. Is the issuance and docketing of tax warrants (judgment) by the Utah Tax Commission constitutional?

2. Can the Utah District Court order petitioner into court to testify in supplemental proceedings concerning his property pursuant to its rules of civil procedure in order to enforce tax warrants?

3. Can the Utah District Court hold the defendant in contempt for not answering proper questions concerning his property?

4. Do the taxation statutes of the state of Utah, granting taxpayers a hearing before the Tax Commission and an appeal before the Utah Supreme Court, afford this recalcitrant defendant due process pursuant to the 14th Amendment to the Constitution?

STATEMENT

A tax warrant (judgment) was issued in the State District Court on September 15, 1972, as a result of petitioner's failure to complete his income tax return for the year 1971, or to provide any information to the Tax Commission after several notices and opportunities for hearing. Petitioner represented to the District Court in the November 15, 1972, proceeding that he was acting as his own attorney in response to the court's inquiry.

Petitioner's Motion to Dismiss (on constitutional grounds) was heard and denied in the District Court on November 15, 1972, on the grounds that the court lacked jurisdiction to hear the question of the validity of the warrant, as defendant had not availed himself of Section 59-14-41, Utah Code Annotated (1953), granting exclusive jurisdiction to the Supreme Court of Utah of appeals from the decisions of the Utah State Tax Commission.

In Supplemental Proceedings of November 15, 1972, petitioner was again ordered to answer the proper questions pertaining to his property. Petitioner was granted 10 days to provide respondent with information concerning his assets. Petitioner, before and after being sworn in, invoked the 5th Amendment. The court questioned into the reason for his invoking the 5th Amendment and then instructed petitioner that he was in no danger of criminal prosecution for answering the questions. The court then ordered that he answer the questions or be found in contempt. This order was reduced in writing (Appendix A). He was later found in contempt by a subsequent judge in a later hearing for failure to obey a later order to obey the first order (Appendix B).

On January 2, 1973, petitioner sought an interlocutory injunction on the unconstitutionality of the tax warrant and the underlying state statutes, §59-14-59 and 60, Utah Code Annotated (1953), in the United States District Court for the District of Utah, Central Division, C-369-72. On January 11, 1973, the Honorable Aldon J. Anderson, United States District Judge, issued an order dismissing the complaint and petition of petitioner. Then, citing this court,

he concluded that there was "no substantial constitutional question" and that "the power of administrative agencies under such circumstances has long been established." (See Appendix C.) That decision was never appealed to a higher Federal court.

On August 21, 1973, the Supreme Court of Utah affirmed the contempt charge of the District Court (see Appendix D). The case was appealed to the Utah Supreme Court and a unanimous decision was rendered upholding the statutes and procedures as constitutional. On September 21, 1973, petition for rehearing was denied by the Utah Supreme Court, as no new issues were presented.

On October 12, 1973, Chief Justice E. R. Callister, Jr., issued an order and motion staying execution and enfrocement until appeal was taken to the United States Supreme Court — until December 21, 1973.

The petition was timely filed with the United States Supreme Court.

ARGUMENT

POINT I.

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED AS THE FACTS SHOW THAT THE PETITIONER WAS AFFORDED ALL OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS.

It is respectfully submitted that the petition for writ of certiorari should be denied petitioner. A lengthy discus-

sion will not be presented here by respondent, since the issues raised by petitioner have heretofore been determined many times by this court, the district courts and, correctly, by the Utah Supreme Court.

Petitioner's contention that he was denied due process of law under the taxation statutes of Utah is completely without merit. The validity of such statutes was upheld by the United States District Court for the District of Utah, Central Division, found herein in Appendix C. Respondent also respectfully submits that this court has upheld similar taxation statutes in *Fuentes* v. *Shevin*, 407 U. S. 67 (1972), *Lynch* v. *HFC*, 405 U. S. 538 (1972), and *Phillips* v. *Commissioner*, 283 U. S. 589 (1931).

As was pointed out in the statement, the petitioner was given notice of the proceedings against him. The validity of such notice was again upheld by this court in *Turpin* v. *Lemon*, 187 U. S. 51 (1902).

Petitioner's claim that he was denied the right to counsel is untenable. He chose to represent himself before the court and later obtained counsel to appeal to the Utah Supreme Court.

Petitioner's claim of violation of the 5th Amendment right to remain silent is without merit, not only because this was merely a civil and not a criminal proceeding (*Miranda* v. *Arizona*, 384 U. S. 436, 1966), but also because this court has upheld the right to protect the "legitimate interest of society" (*Couch* v. *U. S.*, 93 S. Ct. 611, 620 (1973)). As an angry taxpayer, the petitioner is not en-

titled to the same rights as a citizen who may los his freedom in a criminal proceeding.

POINT II.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED, IN THE DISCRETION OF THIS COURT, AS IT DOES NOT COMPLY WITH RULE 19 OF THE SUPREME COURT RULES, IN THAT NO SUBSTANTIAL FEDERAL QUESTION EXISTS.

The petitioner did not exhaust his administrative remedies as he failed to appeal the U. S. District Court decision stating that the matter had been heard and decided previously by this court, citing the Utah statutes and the *Coffin Brothers and Company* v. *Bennett* and *Phillips* v. *Commissioner of Internal Revenue* cases. The petitioner further failed to exhaust his administrative remedies in failing to avail himslf of the opportunity for a hearing before the Utah State Tax Commission and an appeal from that decision to the Supreme Court of the state of Utah. The petitioner chose to ignore the procedures set forth in state statutes, and appealing the matter to the Utah State Supreme Court on a contempt issue when he could have appealed the denial of his motions to dismiss in the lower court when that same motion was heard and dismissed by two different judges. Therefore, since the petitioner has more or less intentionally bypassed the proper procedure of the federal

courts and the state courts, it would be improper for this court to grant a writ of certiorari.

It is further improper, as the facts and the issues involved here do not comply with Rule 19 of the Supreme Court Rules. The rule, of course, conditions a review on a writ of certiorari on the sound judicial discretion of this court, and the state contends that there is no special or important reason for the granting of this petition, since the court has already decided the issues in applicable decisions of this court (see the *Fuentes, Shevin, Couch* cases and Appendix E). As pointed out earlier, this court, in those cases, not only demonstrated that the right to due process is not the same in a civil tax proceeding as it is in a criminal miranda situation but also upheld the "legitimate interest of society" in its revenue. Therefore, since the Utah State Supreme Court has decided any federal questions of any possible substances in accordance with the applicable decisions of this court, there being no novel questions nor splits of authority on the issues, the petition for a writ of certiorari should be denied pursuant to Rule 19A of the Supreme Court Rules.

CONCLUSION

Since the petitioner has not exhausted his administrative remedies and has intentionally bypassed those remedies, and also because the petitioner has been granted all of his rights to due process by the U. S. District Courts, the laws and statutes of the state of Utah, the Utah Dis-

trict Court and the Utah Supreme Court, and has not fulfilled the requisites of Rule 19 of this court's rules, the respondent respectfully submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General
Counsel for Respondent

BRUCE M. HALE
Assistant Attorney General
Of Counsel

APPENDIX A

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

STATE TAX COMMISSION OF UTAH,
Plaintiff,

vs.

THOMAS WARNER HOOPES,
Defendant.

ORDER
No. 93-675

The following matters having come on for hearing before the above-entitled court, the Honorable S. Mark Johnson, Judge pro tem, and Bruce M. Hale, Assistant Attorney General of the State of Utah, representing the State Tax Commission, and the defendant representing himself, and having filed a Motion for Dismissal, and the plaintiff having an Order in Supplemental Proceeding properly brought before this Court, arguments having been presented and testimony given that the defendant deposit all of his moneys in the name of a Trust bearing his name, but the defendant not having remembered fully the answers to questions given to him concerning his assets, and the Court being fully apprised in the premises, enter its following Order:

1. The defendant is to provide to the plaintiff's attorney within ten days of receipt of this Order a copy of

the aforementioned Trust Agreement or Indenture, along with its name and address; defendant's Motion is dismissed.

2. The defendant is to provide to the State's attorney a list of all of his accounts receivable as of the 15th day of November; a list of all trust assets, real or personal, and a copy of a statement showing the balance of the mortgage due the First Security Bank on the home located at 2559 Keddingfton Lane, Salt Lake City, Utah.

DATED this 15th day of November, 1972.

S. MARK JOHNSON

District Judge

(SEAL)

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing Order, Civil No. 93-675 to Mr. Thomas W. Hoopes, 2559 Keddington Lane, Salt Lake City, Utah, this 15th day of November, 1972, postage prepaid.

BRUCE M. HALE

APPENDIX B

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

STATE TAX COMMISSION OF UTAH,
Plaintiff,

vs.

THOMAS WARNER HOOPES,
Defendant.

ORDER
No. 93-675

The defendant's Motion to Set Aside the Court's previous Order and Supplemental Order having been called up for hearing before the above-entitled Court on the 13th day of December at the hour of 2:00 o'clock, p.m., and the Utah State Tax Commission having been represented by Mr. Bruce M. Hale, Assistant Attorney General, and the defendant, Mr. Thomas Warner Hoopes being present, and the matter being fully argued, and the Court having read the Memorandums on file, and being fully apprised in the premises, now enters the following Order:

1. That the defendant's Motion to Set Aside Order is denied.

2. That the defendant is ordered to comply with the prior Order of this Court entered on the 15th day of November, 1972, within 10 days in its entirety, or, in the al-

ternative, to pay the judgment herein docketed in full, or to file an appeal to the Supreme Court of the State of Utah within 10 days and file a Supersedeas Bond.

DATED this 14th day of December, 1972.

G. HAL TAYLOR

District Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Order to Mr. Thomas W. Hoopes, 2559 Keddington Lane, Salt Lake City, Utah, this 14th day of December, 1972, postage prepaid.

.....

BRUCE M. HALE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

THOMAS W. HOOPES,
Petitioner,

vs.

STATE TAX COMMISSION OF UTAH, DEAN H. JENSEN, of the State Excise Tax Collection Division of the State Tax Commission of Utah, and DELMAR L. LARSON, Sheriff of Salt Lake County,
Respondents.

C 369-72

ORDER DISMISSING COMPLAINT AND PETITION

Bruce Hale, office of the Attorney General, State of Utah, for respondents State Tax Commission of Utah and Dean H. Jensen.

Merrill K. Davis, office of the Salt Lake County Attorney, for respondent Delmar L. Larson.

Petitioner was represented by himself.

Petitioner seeks an order restraining enforcement of a Warrant for Delinquent Income Tax issued by the State Tax Commission of Utah on the ground that the underlying state statutes, UTAH CODE ANN. §§ 59-14-59 and 59-14-60, are unconstitutional. The constitutional issues

were argued at a January 5, 1972, hearing. The court has studied the pertinent issues and arguments.

Petitioner's central claim appears to be that no administrative agency has the power to levy upon and cause the sale of petitioner's property for the payment of delinquent taxes even though the machinery of the courts is invoked to effect the sale and adequate notice, right to hearing and prior and subsequent judicial review are assured (as they appear to be by Utah law, *e.g.*, UTAH CODE ANN. §§ 59-14-29, 59-14-39 to 42 [respondent is presently exercising his right of judicial review in state court]). The power of administrative agencies under such circumstances has long been established. *See e.g., Coffin Brothers & Company* v. *Bennett*, 277 U. S. 29 (1928). *C.f. e.g., Phillips* v. *Commissioner of Internal Revenue*, 283 U. S. 589 (1931). Petitioner's appurtenant constitutional arguments appear equally inconsistent with the decisions of this nation's courts — which decisions, petitioner's intimations notwithstanding, must bear greater credence than the opinions of private individuals if an orderly and reflective, constitutional society is to endure.

There being no substantial constitutional question at issue, it is unnecessary to convene a three-judge district court purusant to 28 U. S. C. §§ 2281 and 2284. For the same reason,

IT IS ORDERED that petitioner's complaint and petition be and hereby are dismissed.

DATED this 11th day of January, 1973.

ALDON J. ANDERSON
United States District Judge

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE TAX COMMISSION OF UTAH,
Plaintiff and Respondent,
vs.
THOMAS WARNER HOOPES,
Defendant and Appellant.

Nos. 13181 and 13173

ELLETT, Justice:

The defendant appeals from an order of contempt made by the district court in a supplemental proceeding wherein the State Tax Commission was attempting to secure some information regarding the assets belonging to the defendant.

The conduct of the defendant was clearly contumaceous, and he does not contend to the contrary. His defense is based upon the proposition that the state income tax law is unconstitutional.

The defendant made a tax return containing no information. He struck the wording about its being made under the penalty of perjury, signed it, and returned it to the plaintiff. Subsequently, pursuant to law,[1] the plaintiff de-

termined the amount of tax due and mailed a notice of deficiency to the defendant and thereafter a demand for payment. The defendant made no request for a redetermination of the tax[2] and no appeal to this court.[3] He did not pay the tax assessed, and the plaintiff issued a warrant for delinquent taxes, including penalties and interest, in the amount of $2,258.02. Based thereon, the order in supplemental proceedings above referred to was obtained in the district court.

Despite the Eleventh Amendment to the Federal Constitution as interpreted by the case of *Hans* v. *Louisiana*,[4] Mr. Hoopes brought suit in the federal district court wherein he sued the State of Utah through its State Tax Commission[5] to have that court determine that our statute and the procedures outlined therein are unconstitutional. Aside from the question of the jurisdiction of the federal court, the ruling made by the judge there was correct,[6] viz.:

> Petitioner's central claim appears to be that no administrative agency has the power to levy upon and cause a sale of the petitioner's property for the payment of delinquent taxes even though

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[1] Sec. 59-14-58, U. C. A. 1953.

[2] Sec. 59-14-29, U. C. A. 1953.

[3] Sec. 59-14-40, U. C. A. 1953.

[4] 134 U. S. 1 (1889).

[5] *Hoopes* v. *State Tax Commission*, Civil No. 369-72.

[6] *Coffin Bros. & Co., et al.* v. *Bennett*, 277 U. S. 29 (1928); *Phillips* v. *Com.*, 283 U. S. 589 (1931).

> the machinery of the court is invoked to effect the sale and adequate notice, right to hearing and prior and subsequent judicial review are assured (as they appear to be by Utah law; e.g., Utah Code Annotated, Section 59-14-29, 59-14-39 to 42), . . . the power of administrative agencies under such circumstances has long been established.

Our statute[7] provides that the warrant issued by the Tax Commission may be filed with the clerk of the district court and shall have the force and effect of a judgment rendered in said court.

The statute does not deny due process to a recalcitrant taxpayer for the reason that such a one has a right to be heard regarding the determination of his tax[8] and a right to have this court review the ruling of the commission.[9]

Mr. Hoopes refused to avail himself timely of the due process of law afforded by the statute, and the determination of the tax by the commission became final.[10]

Since the statutes and the procedure outlined therein did not deprive Mr. Hoopes of "Due Process of Law" as he claims, he is not entitled to any relief on this appeal. He must answer the proper questions propounded to him regarding his assets or bear the consequence of his contumacy.

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[7] Sec. 59-14-60, U. C. A. 1953.

[8] Secs. 59-14-29 to 31, U. C. A. 1953.

[9] Secs. 59-14-40, U. C. A. 1953.

[10] Sec. 59-14-39, U. C. A. 1953.

The judgment of contempt rendered in the district court is affirmed. No costs are awarded.

WE CONCUR:

.....

E. R. Callister, Jr., Chief Justice

.....

J. Allan Crockett, Justice

.....

R. L. Tuckett, Justice

Henriod, Justice, does not participate herein.

PROOF OF SERVICE

I, Vernon B. Romney, Attorney General of the state of Utah,

HEREBY CERTIFY that on the 18th day of December, 1973, I served three copies of the foregoing Brief for Respondent in Opposition to Mr. Walker E. Anderson, 425 Newhouse Building, Salt Lake City, Utah 84111, Attorney for Petitioner, by depositing same in a United States Mailbox, postage prepaid.

VERNON B. ROMNEY
Attorney General
Salt Lake City, Utah 84114